

OUR FILE NO: 108/001/JLC
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LORENZ KIENZLE,

Plaintiff,

-against-

DOCKET NO.
07 CIV 10619

RULE 7.1

A.A. TRUCK RENTING CORP., EZRA LEVI,
and DEDDY HALIM,

Defendants.

-----X
COUNSELORS:

Pursuant to Rule 7.1 of the Local Civil Rules for the Southern and Eastern Districts of New York and to enable Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel of record for *A.A. TRUCK RENTING CORP., and EZRA LEVI*, a private (non-governmental) party certifies that the following are corporate parents, or publicly held corporations that owns 10% or more of its stock:

NONE

Dated: New York, New York
February 7, 2008

LAW OFFICES OF CHARLES J. SIEGEL

By: 

JACK L. COHEN ((JLC/9449))
Attorneys for Defendants
A.A. TRUCK RENTING CORP.,
and EZRA LEVI
40 Wall Street Plaza – 7th Floor
New York, New York 10005

AFFIDAVIT OF SERVICE

STATE OF NEW YORK }
 } ss.:
COUNTY OF NEW YORK }

PAM SHIWRAM, being duly sworn, deposes and says:

That deponent is not a party to this action, is over 18 years of age and resides in Queens, New York, that she is a clerk in the Law Office of CHARLES J. SIEGEL, the attorneys for the Defendants, A.A. Truck Renting Corp. and EZRA LEVI herein, that on the 7th day of February, 2008, she served the within:

RULE 7.1

upon:

DAVID HOROWITZ, P.C.
By: Steven Horowitz, Esq.
Attorneys for Plaintiffs
Office & P.O. Address
276 Fifth Avenue
New York, New York 10001
(212) 684-3636

BRAND, GLICK & BRAND, P.C.
By: Peter M. Khrinenko
Attorneys for Defendant
Deddy Halim
600 Old Country Road – Suite 440
Garden City, New York 11530
(516) 746-3500

the undersigned attorneys by mailing a true copy in a postpaid wrapper in an official depository under the exclusive care and custody of the United States Postal Service within New York City, New York directed to them at the addresses shown, heretofore designated by them for that purpose.


PAM SHIWRAM

Sworn to before me this
7th day of February, 2008


NOTARY PUBLIC

SHEILA I SAMPLE
Notary Public, State of New York
No. 01SA6000019
Qualified in Kings County
Commission Expires Dec. 8, 2009

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LORENZ KIENZLE,

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ANSWER

A.A. TRUCK RENTING CORP., EZRA LEVI,
and DEDDY HALIM,

Defendants.

-----X
C O U N S E L O R S :

Defendants, A.A. TRUCK RENTING CORP., and EZRA LEVI, by and through their attorneys, the LAW OFFICES OF CHARLES J. SIEGEL, answering the Complaint of the plaintiff herein, alleges upon information and belief:

1. Deny any knowledge or information sufficient to form a belief as to paragraphs designated "FIRST", "FOURTH", "FIFTH", "SIXTH", "ELEVENTH", "TWELFTH", "THIRTEENTH", "FOURTEENTH", "FIFTEENTH", "SIXTEENTH", "TWENTIETH" and "TWENTY-THIRD" of the Complaint.
2. Admit as to paragraphs designated "SECOND", "THIRD", "SEVENTH", "EIGHTH", "NINTH", "TENTH" and "EIGHTEENTH" of the Complaint.

3. Deny paragraphs designated 'SEVENTEENTH', 'NINETEENTH', 'TWENTY-FIRST', 'TWENTY-SECOND' and 'TWENTY-FOURTH' of the Complaint.

4. EXCEPT WHERE SPECIFICALLY ADMITTED, THE DEFENDANTS, A.A. TRUCK RENTING CORP., and EZRA LEVI DENY ALL OTHER ALLEGATIONS CONTAINED IN THE COMPLAINT.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

5. Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care, or rehabilitative services, loss of earnings, or other economic loss, has been or will, with reasonable certainty, be placed or indemnified in whole or in part from collateral source.

If any damages are recoverable against said defendants, the amount of such damages shall be diminished by the amount of the funds which plaintiff has or shall receive from such collateral source.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

6. In the event that the plaintiff recovers any judgment against these defendants, then these defendants demand that any such judgment be diminished in accordance with Article 16 of the New York Civil Practice Law & Rules.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

7. If the plaintiff, LORENZ KIENZLE, sustained damages as alleged, such damages occurred while plaintiff was engaged in an activity into which he entered, knowing the hazard, risk and danger of the activity and he assumed the risks incidental to and attending the activity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

8. The plaintiff's action is barred and the sole and exclusive remedy is confined and limited to the benefits and provisions of Article 51, Section 5104, of the Insurance Law of the State of New York, due to plaintiff not sustaining a serious injury as that term is defined in Article 51, Section 5102(d) of the Insurance Law of the State of New York.

That if the plaintiff herein has submitted to or applied for or participated in any arbitration proceeding pertaining to No-Fault benefits, then any decision or determination shall act as a bar or as collateral estoppel in the trial of this suit.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

9. That the injuries and damages allegedly sustained by the plaintiff, if any, were contributed to or caused by the failure of said plaintiff to use the seat belt and other safety restraining equipment provided in the motor vehicle.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

10. Defendants, A.A.TRUCK RENTING CORP., and EZRA LEVI, pursuant to Section 1412 of the Civil Practice Law & Rules, alleges on information and belief, that if plaintiff sustained any injuries or damages at the time and place alleged in his Complaint, such injuries or damages were the result of the culpable conduct of the plaintiff or because of the plaintiff's negligence and assumption of risk. Should it be found however, that the answering defendant is liable to the plaintiff herein, any liability being specifically denied, then the answering defendant alleges that if any damages are found, they are to be apportioned among the plaintiff and defendants according to the degree of responsibility that each is found to have in the occurrence, in proportion to the entire measure of responsibility for the occurrence.

**AS AND FOR A CROSS-CLAIM AGAINST THE DEFENDANT
DEDDY HALIM, THE DEFENDANTS, A.A. TRUCK RENTING CORP.,
and EZRA LEVI ALLEGE, UPON INFORMATION AND BELIEF,
PURSUANT TO FEDERAL RULE OF THE CIVIL PROCEDURE:**

11. That if the plaintiff sustained the damages alleged in the Complaint through any negligence and/or breach of warranty and/or breach of contract and/or breach of indemnification agreement other than his own, such damages were caused by and resulted from the negligence and/or breach of warranty and/or breach of contract and/or breach of indemnification agreement of the above-named co-defendant, DEDDY HALIM.

That if the plaintiff recovers a verdict against the answering defendants for the damages alleged in the Complaint, such liability will have been caused by the negligence and/or breach of warranty and/or breach of contract and/or breach of indemnification agreement of the above-named co-defendant..

That by reason of the foregoing, if any verdict or judgment is rendered in favor of the plaintiff against the answering defendants, then the above named co-defendant will be liable to the answering defendants, in whole or in part, for said verdict and for costs and expenses incurred by the said answering defendants in the defense of this action.

WHEREFORE, the answering defendants demand judgment dismissing the Complaint herein and further demands judgment over and against the co-defendant hereinbefore named, in

whole or in part, for any verdict or judgment rendered against the answering defendants, together with the costs and disbursements of this action and the attorney's fees and expenses incurred herein.

Dated: New York, New York
February 07, 2008

Yours, etc.

Law Offices of
CHARLES J. SIEGEL
Attorney for Defendants
A.A. Truck Renting Corp. and
EZRA LEVI
Office & P.O. Address
40 Wall Street - 7th Floor
New York, New York 10005
(212) 440-2350

By: 
JACK L. COHEN(JLC/C9449)

TO: DAVID HOROWITZ, P.C.
By: Steven Horowitz, Esq.
Attorneys for Plaintiffs
Office & P.O. Address
276 Fifth Avenue
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BRAND, GLICK & BRAND, P.C.
By: Peter M. Khrinenko
Attorneys for Defendant
Deddy Halim
600 Old Country Road – Suite 440
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ANSWER

upon:

DAVID HOROWITZ, P.C.
By: Steven Horowitz, Esq.
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Deddy Halim
600 Old Country Road – Suite 440
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the undersigned attorneys by mailing a true copy in a postpaid wrapper in an official depository under the exclusive care and custody of the United States Postal Service within New York City, New York directed to them at the addresses shown, heretofore designated by them for that purpose.


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Sworn to before me this
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